

Decision 02-07-038 July 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) for approval of servicing agreement between the State of California Department of Water Resources ("DWR") and SDG&E Pursuant to Chapter 4 of the Statutes of 2001 (Assembly Bill 1 of the First 2001-2002 Extraordinary Session).

Application 01-06-039  
(Filed June 22, 2001)

**OPINION APPROVING AMENDMENT NO. 1 TO THE FIRST AMENDED AND  
RESTATED SERVICING AGREEMENT BETWEEN SAN DIEGO GAS &  
ELECTRIC COMPANY AND THE DEPARTMENT OF WATER RESOURCES**

**Summary**

On June 21, 2002, San Diego Gas & Electric Company (SDG&E) filed a second petition for modification of Decision (D.) 01-09-013. D.01-09-013 was the decision that approved a Servicing Agreement between the California Department of Water Resources (DWR) and SDG&E.<sup>1</sup> In its June 21, 2002

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<sup>1</sup> The Servicing Agreement sets forth the terms and conditions under which SDG&E provides the transmission and distribution of DWR-purchased electricity; addresses billing, collection, and related services on behalf of DWR; and addresses DWR's compensation to SDG&E for providing those services. In the first petition, filed on March 29, 2002, SDG&E sought approval for certain revisions to the Servicing Agreement as a result of changes ordered in D.01-09-013. SDG&E also sought in the first petition to make the Servicing Agreement consistent with the Rate Agreement between DWR and the Commission that was approved in D.02-02-051, and revisions required to include remittances by SDG&E to DWR for imbalance energy as ordered in D.02-02-052. By D.02-04-048 dated April 22, 2002, the Commission granted SDG&E's March 29 petition and approved the "First Amended and Restated Servicing Agreement."

petition for modification, SDG&E seeks Commission approval of an amendment (Amendment No. 1) to the First Amended and Restated Servicing Agreement. SDG&E and DWR recently negotiated this latest amendment, whose purposes are to provide a separate line item on the Consolidated Utility Bill for Bond Charges and to implement the 2002 20/20 Program as ordered by the Commission in Resolution E-3770. SDG&E attached a copy of Amendment No. 1 to its petition.

Today's decision approves Amendment No. 1 to the First Amended and Restated Servicing Agreement, and the petition for modification of D.01-09-013 is granted as set forth in this decision. A copy of Amendment No. 1 is attached to this decision as Appendix A.

### **Background**

In January 2001, in response to the energy crisis facing California, the Legislature gave DWR the authority to purchase electricity and sell it to the retail customers of California's electric utilities. This authority was provided in Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB1X). In March 2001, the Commission ordered SDG&E to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (D.01-03-081.) This arrangement was formalized in the Servicing Agreement that was entered into between SDG&E and DWR, and approved with certain modifications in D.01-09-013. As described in Footnote 1, *supra*, D.02-04-048 modified D.01-09-013 in response to an earlier petition by SDG&E.<sup>2</sup>

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<sup>2</sup> In addition, in a separate decision issued today we grant SDG&E's motion, filed pursuant to Ordering Paragraph 8 of D.01-09-013, regarding the incremental costs that SDG&E bills to DWR for providing services under the servicing agreement.

In its June 21, 2002 petition for modification of D.01-09-013, SDG&E seeks to have the Commission shorten the time for processing the petition and for issuance of a final Commission decision on the petition in order to expedite both the implementation of the 2002 20/20 program and the issuance of DWR's bonds under AB1X. In particular, SDG&E requests that the Commission grant the petition and approve Amendment No. 1 at the June 27, 2002 Commission meeting. A ruling shortening the time for parties to respond to the petition was issued on June 24, 2002.<sup>3</sup> At its June 27 meeting the Commission deferred action on the item to a carry-over meeting scheduled for July 11, 2002. On June 28, 2002 the ALJ issued a ruling providing additional opportunity for responses, with responses due July 3, 2002. No one filed any response to SDG&E's petition.

### **Discussion**

On May 23, 2002, Governor Davis issued Executive Order D-56-02, ordering DWR to implement a limited-term, rate-reward program (the 2002 20/20 Program) for conservation efforts by residential customers of the utilities, similar to the 20/20 program offered in 2001. On June 6, 2002, the Commission issued Resolution E-3770 ordering SDG&E to implement the 2002 20/20 Program. SDG&E states that Amendment No. 1 is intended both to implement the 2002 20/20 Program and to provide a separate line item on the Consolidated Utility Bill for bond charges. SDG&E further states that these changes are consistent with prior Commission decisions and are needed as a result of Resolution E-3770 and D.02-02-051 (which approved the Rate Agreement providing for separate Bond Charges).

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<sup>3</sup> On June 21, 2002 the Administrative Law Judge provided notice electronically to parties of record in this proceeding and in A.00-11-038 *et al.* of the shortened time for responses to the petition.

SDG&E proposes that D.01-09-013 be modified to adopt Amendment No. 1 to the First Amended and Restated Servicing Agreement and be modified with the following textual changes to D.01-09-013:

(1) Add new Finding of Fact 28 to read as follows:

“SDG&E and DWR have negotiated Amendment No. 1 to the First Amended and Restated Servicing Agreement consistent with Resolution E-3770 and D.02-02-051.”

(2) Add new Conclusion of Law 14 to read as follows:

“SDG&E and DWR’s Amendment No. 1 to the First Amended and Restated Servicing Agreement is reasonable and in the public interest. Accordingly it should be adopted.”

(3) Revise Ordering Paragraph 1 to read as follows:

“The Amendment No. 1 to the First Amended and Restated Servicing Agreement that was executed by and between the California Department of Water Resources and San Diego Gas & Electric Company, on June 21, 2002, attached as Appendix A of this decision, is approved.”

We will approve Amendment No. 1 to the First Amended and Restated Servicing Agreement in order to facilitate implementation of the 2002 20/20 program, which is to commence on July 1, 2002, and to facilitate the expeditious issuance of bonds by DWR under AB 1X. We find that SDG&E’s proposed revision to Ordering Paragraph 1 of D.01-09-013 may be confusing. We will therefore include SDG&E’s proposed ordering language in a new Ordering Paragraph 10 to that decision.

### **Rehearing and Judicial Review**

This decision construes, applies, implements, and interprets the provisions of AB1X. Therefore, Public Utilities Code §1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public

Utilities Code §1768 (procedures for judicial review) are applicable (*See* Stats. 2001-2002, First Extraordinary Session, Ch. 9.) (AB31X).

### **Comments on Draft Decision**

Public Utilities Code Section 311(g)(1) generally requires that the draft decision be served on all parties, and be subject to at least 30 days of public review and comment prior to a vote of the Commission. However, the comment period may be waived “in an uncontested matter where the decision grants the relief requested.” (Rules of Practice and Procedure, Rule 77.7(f).) Since no one filed a response to SDG&E’s petition for modification of D.01-09-013, the comment period is waived.

### **Findings of Fact**

1. Amendment No. 1 to the First Amended and Restated Servicing Agreement between SDG&E and DWR will, if approved, facilitate implementation of the 2002 20/20 program.
2. Amendment No. 1 to the First Amended and Restated Servicing Agreement between SDG&E and DWR will, if approved, facilitate the expeditious issuance of bonds by DWR.
3. No one filed any response to SDG&E’s June 21, 2002 petition for modification of D.01-09-013.

### **Conclusions of Law**

1. D.01-09-013 should be modified as specified in this decision.
2. Amendment No. 1 to the First Amended and Restated Servicing Agreement between SDG&E and DWR should be approved.
3. The comment period on the draft decision is waived.

**O R D E R**

**IT IS ORDERED** that:

1. The petition for modification of Decision (D.) 01-09-013, filed by San Diego Gas & Electric Company (SDG&E) on June 21, 2002, is granted as set forth below.
  - (a) D.01-09-013 is modified by adding new Finding of Fact 28, which shall read as follows: “SDG&E and DWR have negotiated Amendment No. 1 to the First Amended and Restated Servicing Agreement consistent with Resolution E-3770 and D.02-02-051.”
  - (b) D.01-09-013 is modified by adding new Conclusion of Law 14, which shall read as follows: “SDG&E and DWR’s Amendment No. 1 to the First Amended and Restated Servicing Agreement is reasonable and in the public interest. Accordingly it should be adopted.”
  - (c) D.01-09-013 is modified by adding new Ordering Paragraph 10, which shall read as follows: “The ‘Amendment No. 1 to the First Amended and Restated Servicing Agreement’ that was executed by and between the California Department of Water Resources and San Diego Gas & Electric Company, on June 21, 2002, attached as Appendix A of this decision, is approved.”
2. Amendment No. 1 to the First Amended and Restated Servicing Agreement between SDG&E and DWR, a copy of which is attached to this decision as Appendix A, is approved.

3. This proceeding is closed.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners

## **APPENDIX A**



